

801.40; 801.11(e)

May 18, 1998

VIA FEDERAL EXPRESS

Dick Smith, Esq.  
Senior Attorney  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission, Room 303  
Washington, D.C. 20580

Dear Mr. Smith:

This letter is to confirm the oral advice from your office given today in connection with the First Transaction described on the enclosed one-page memo and Ownership Structure chart, copies of which were faxed to you on May 15, prior to our discussion today.

Based upon the description of the parties and transactions in the attachments, and as further discussed with us, you have concluded that no premerger notification is required under the Hart-Scott-Rodino Antitrust Improvements Act for Transaction One, either in connection with the formation of LLC, the formation of Holding Corp., or the acquisition by Holding Corp. of all of the outstanding shares of the Operating Company.

Your assumptions were correct that both LLC and Holding Corp. are newly formed for purposes of this transaction, and do not have regularly prepared balance sheets. Substantially all of the \$9.9 million being contributed to LLC by its members will be invested in Holding Corp. to fund the acquisition of Operating Company. Similarly, the aggregate \$9.9 million and \$2.4 million being contributed to Holding Corp. by LLC and Existing Corp. will be used by Holding Corp. to fund the acquisition of Operating

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Company. Thus, in preparing the pro forma balance sheets for LLC and Holding Corp., such amounts would be subtracted, leaving LLC close to a zero dollar acquiring person. Rule § 801.11(e).

Thank you for your prompt review and response to our inquiry.

Very truly yours,

[Redacted signature]

cc: [Redacted]

Since LLC is only a 9.9111 person, no filings would be required for its formation even if its structure makes it more like a corporation. *D.R. Smith*

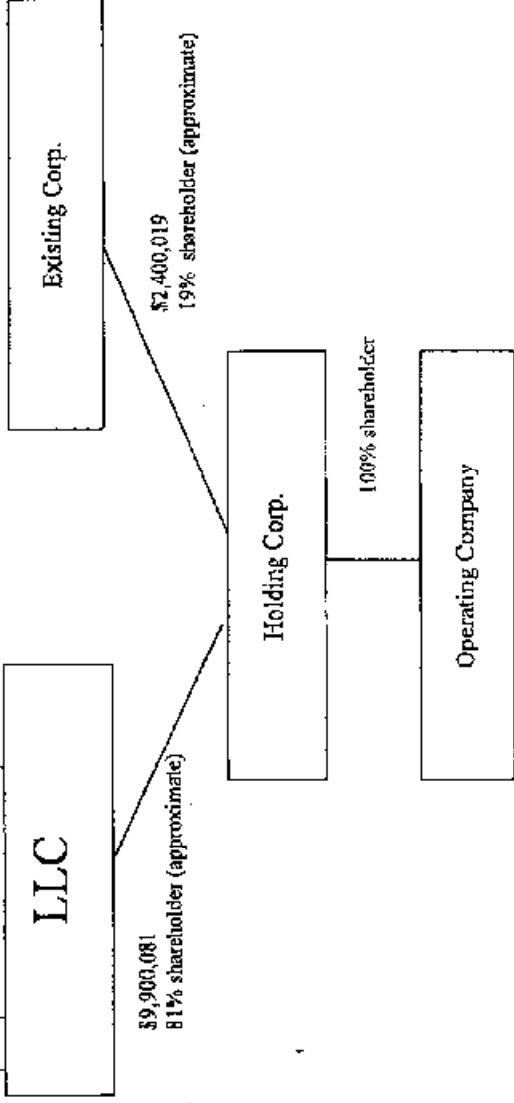
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OWNERSHIP STRUCTURE  
(HSR Analysis)

Individual One  
\$3.0 million (max.)

Individual Two  
\$3.0 million (max.)

Approximately 20 other individuals and one corporation who are each accredited investors (investing less than \$1 million each)  
\$3.9 million in aggregate



The relevant facts to the analysis of whether a Pre-Merger Notification and Report Form (a "HSR Filing") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, is required, are as follows:

Transaction One:

1. Holding Corp. is being formed for the purpose of acquiring all the outstanding shares of Operating Company for a price in excess of \$30 million. Holding Corp. is being capitalized with approximately \$12.3 million, and will use substantially all such capitalization to fund the purchase price for the Operating Company. The balance of the purchase price will be financed through borrowings from an unaffiliated commercial bank and/or proceeds from sale of certain assets of the Operating Company in Transaction Two.
2. Operating Company is presently a wholly-owned subsidiary of a corporation with greater than \$100 million in total assets and annual net sales.
3. LLC is being formed for this transaction and will own approximately 81% of the outstanding shares of Holding Corp. No member of the LLC has or controls 50% or more of the ownership interests in the LLC. No member of the LLC has the power to vote 50% or more of the voting interests in the LLC. No member of the LLC has the right to 50% or more interest in profit or liquidation distributions of the LLC. No investor in LLC or Holding Corp. is guaranteeing any loan or other indebtedness.

Transaction Two:

4. Shortly after Holding Corp.'s acquisition of Operating Company, Holding Corp. intends to sell a substantial portion of its assets for in excess of \$15 million to a third party with no relation to any of the direct or indirect investors in Holding Corp. The parties with respect to this asset sale will be making an HSR Filing in connection with such transaction.
5. Based upon our research and the foregoing structure, we have concluded that no HSR Filing is required for Transaction One, either in connection with the formation of LLC, the formation of Holding Corp., or the acquisition of all the outstanding shares of Operating Company.